

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

400A0780

SENATE JUDICIARY COMMITTEE ENGROSSED

NO. **SB267** - 2/18/97

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to increase the penalties for possession of drugs and drug  
2 paraphernalia and for drug distribution and storage.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-42-5 be amended to read as follows:

5 22-42-5. No person may knowingly possess a controlled drug or substance unless ~~such~~ the  
6 substance was obtained directly or pursuant to a valid prescription or order from a practitioner,  
7 while acting in the course of ~~his~~ the practitioner's professional practice; or except as otherwise  
8 authorized by chapter 34-20B. A violation of this section is a ~~Class 5~~ Class 4 felony.

9 Section 2. That § 22-42-6 be amended to read as follows:

10 22-42-6. No person may knowingly possess marijuana. It is a Class 1 misdemeanor to  
11 possess two ounces of marijuana or less. It is a Class 6 felony to possess more than two ounces  
12 of marijuana but less than one-half pound of marijuana. It is a ~~Class 6~~ Class 5 felony to possess  
13 one-half pound but less than one pound of marijuana. It is a ~~Class 5~~ Class 4 felony to possess one  
14 to ten pounds of marijuana. It is a ~~Class 4~~ Class 3 felony to possess more than ten pounds of  
15 marijuana. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction

of a violation of this section not to exceed ten thousand dollars.

Section 3. That § 22-42-7 be amended to read as follows:

22-42-7. The distribution of less than one-half ounce of marijuana without consideration is a ~~Class 2~~ Class 1 misdemeanor; otherwise, the distribution of one ounce or less of marijuana is a ~~Class 1 misdemeanor~~ Class 6 felony. The distribution of more than one ounce but less than one-half pound of marijuana is a ~~Class 6~~ Class 5 felony. The distribution of one-half pound but less than one pound of marijuana is a ~~Class 5~~ Class 4 felony. The distribution of one pound or more of marijuana is a ~~Class 4~~ Class 3 felony. However, the distribution of any amount of marijuana to a minor is a ~~Class 5~~ Class 4 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section not to exceed ten thousand dollars.

Section 4. That § 22-42-8 be amended to read as follows:

22-42-8. Any person who knowingly obtains possession of a controlled drug or substance by theft, misrepresentation, forgery, fraud, deception or subterfuge is guilty of a ~~Class 5~~ Class 4 felony.

Section 5. That § 22-42-11 be amended to read as follows:

22-42-11. Any person who inhabits a room knowing that any controlled drug or substance is being illegally stored or used therein, is guilty of a ~~Class 1 misdemeanor~~ Class 6 felony. However, if the only controlled drug or substance being illegally stored or used therein is one-half pound or less of marijuana, the person is guilty of a Class 1 misdemeanor.

Section 6. That § 22-42-15 be amended to read as follows:

22-42-15. Any person who intentionally ingests, inhales, breathes or otherwise takes into the body any substance, except alcoholic beverages as defined in § 35-1-1, for purposes of becoming intoxicated, unless such substance is prescribed by a practitioner of the medical arts lawfully practicing within the scope of their practice, is guilty of a ~~Class 1 misdemeanor~~ Class 6 felony.

Section 7. That § 22-42-16 be amended to read as follows:

22-42-16. No person may deliver or possess with intent to deliver or knowingly manufacture any noncontrolled substance which ~~he~~ the person represents to be a substance controlled under the provisions of this chapter. Any person who violates this section is guilty of a ~~Class 1 misdemeanor~~ Class 6 felony.

Section 8. That § 22-42A-3 be amended to read as follows:

22-42A-3. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object, ~~to~~ may use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body any controlled substance or marijuana in violation of this chapter. Any person who violates any provision of this section is guilty of a ~~Class 2~~ Class 1 misdemeanor.

Section 9. That § 22-42A-4 be amended to read as follows:

22-42A-4. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object, ~~to~~ may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or marijuana in violation of this chapter. Any person who violates any provision of this section is guilty of a ~~Class 1 misdemeanor~~

1     Class 6 felony.

1    **BILL HISTORY**

2    2/4/97 First read in Senate and referred to Judiciary. S.J. 308

3    2/12/97 Scheduled for Committee hearing on this date.

4    2/12/97 Deferred to another day. S.J. 408

5    2/14/97 Scheduled for Committee hearing on this date.

6    2/14/97 Judiciary Do Pass Amended, AYES 4, NAYS 3. S.J. 467